guilty and so make him decide the case. That cannot be the law (see: Viscount Sankey L.C. in *Woolmington* v. *Director of Public Prosecution.*[2] All that is required there is for the judge to apply the test, is there evidence upon which the jury might find the accused guilty.

It might be argued that the position is different where a judge is a judge both of law and fact. However, the same test must be applied in each instance in Sarawak as is clear from the provisions of section 181 of the Criminal Procedure Code. It is of course to be noted that Sarawak has no trial by jury only by assessors. Assessors do not have the powers and duties of a jury. But nevertheless they do have a vital part to play in criminal trials. It follows, therefore, that it behoves the magistrate to apply the same test as would a judge with assessors. The position then is that at the close of the prosecution upon submission being made a magistrate must ask himself not whether he is satisned that the prosecution has proved the case beyond reasonable doubt but whether there is evidence which if believed by reasonable men — it follows that it must be capable of such belief — would justify such men in convicting the accused of the offence charged. If he comes to the conclusion that there is no such evidence then he may acquit. If, however, he considers that such evidence does exist he should rule that there is a case to answer. It is then a matter for the accused, or his counsel, to decide what to do. He may say nothing and rest upon the submision, or he may make an unsworn statement, or give evidence on oath and call witnesses in the normal way. In any of the above events it will then fall to the magistrate to consider the total of the evidence that is then before him and applying the normal test that is applied in a criminal prosecution decide to his own satisfaction the guilt of the accused.

If such a test as I have indicated above had been applied by the learned magistrate, he may well have ruled that there was a case to answer but there are so many other points raised by the ruling upon which I have not been addressed either by the prosecution or counsel for the respondent that I am not prepared to comment with any degree of certainty. But had he done so I again cannot say what course Mr. Reddi would have adopted. It may have been the first of the three courses which I have mentioned and it may very well have been that at that stage the learned magistrate would have acquitted the respondent.

In the event, however, the learned magistrate has applied the wrong test and the acquittal of the respondent cannot stand. I therefore, though with considerable reluctance, order a re-trial of this case upon the three charges as originally preferred by the prosecution. Whether the prosecution, having received a ruling which it set out to achieve, considers this a proper case to pursue is a matter which I will not comment upon as I think it would be improper for me to do so.

Re-trial ordered.

RE FRASER & NEAVE LTD. TAN KENG SIONG v. TAN HOCK KIANG & ORS.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) September 4, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 29 of 1967]

Companies — Shares — Transfer of — Refusal of directors to register — Compliance with provisions laid down in articles of association in regard to transfer — Usual or common form of sharetransfer in use in Singapore — Requirements for valid gift — Companies Ordinance (Cap. 174), ss. 65(1) & 101.

A husband the registered holder of $5,000 ordinary stock in the company gave to his wife his share certificate together with a transfer form signed by him but was not attested by a witness. The form was undated and the consideration was not stated. Some years later the wife affixed her signature to the transfer form which was duly attested, and after causing the transfer to be dated and stamped sent it together with the certificate to the company for registration. The company refused to register the transfer because the signature of the husband had not been attested. The wife made no attempt to remedy the omission because of strained relationship with her husband. Instead, she applied by originating motion to the High Court for an order to rectify the register of members of the company by removing the name of the husband therefrom and inserting therein her name in substitution as the holder of the stock. The learned judge who heard the application in granting the same held that the articles of association of the company contained no mandatory requirement with regard to the form of instrument of transfer and the husband being presumed to make a gift had done all he could do to divest himself of the ownership of the stock and to vest it in his wife. On appeal,

Held: (1) it is settled law that a shareholder who desires to transfer his shares must comply with provisions relating to transfer laid down in the articles of association. The usual or common form of transfer requires the transferor's signature to be attested and this was the correct interpretation of the relevant article of association of the company in this case;

(2) assuming the husband intended to make a gift of the stock it was nevertheless an incomplete gift according to law because he failed to do everything required to transfer effectually the stock from himself to his wife and the learned judge erred in deciding that the husband had done all he could do to divest himself of ownership and vest it in the wife.

Case referred to:—

(1) *Re Williams* [1917] 1 Ch. 1.

FEDERAL COURT.

G. S. Hill for the appellant.

A. S. K. Wee for the 1st respondent.

M. Karthigesu for the 2nd respondents.

Cur. Adv. Vult.

Tan Ah Tah F.J.: This is an appeal from a judgment of Winslow J. on an application made by way of originating motion under section 101 of the Companies Ordinance (Cap. 174).

The relevant facts may be briefly stated as follows. In or about 1958 the appellant (hereinafter referred to as "the husband"), who was then the registered holder of $5,000 ordinary stock in Fraser & Neave Ltd., the second respondents (hereinafter referred to as "the company"), handed the certificate relating to the stock to his wife, the first respondent (hereinafter referred to as "the wife"), together with a transfer form signed by him. The transfer form used by the husband was the usual or common form of share transfer used in Singapore. At the time he handed it to the wife, it contained the wife's name as transferee and specified the amount of the stock, the number of the scrip and the name of the company. The signature of the husband was not attested by anyone although the form provided for attestation by a witness. The form was undated and the consideration was not stated.

In January 1964 the wife affixed her signature which was duly attested to the transfer and after causing the transfer to be dated and stamped sent it together with the certificate to the company for registration. The company refused to register the transfer because the signature of the husband had not been attested.

As the relationship between the husband and wife was by then somewhat strained, the wife made no attempt to remedy this omission. Instead, she applied by way of originating motion to the High Court for an order to rectify the register of members of the company by removing the name of the husband therefrom and inserting therein her name in substitution as the holder of the $5,000 ordinary stock on the ground that she was the rightful owner thereof. The notice of motion was addressed to the company and the husband and was duly served on both of them.

Another application by way of originating motion in respect of $10,000 ordinary stock in Robinson & Co. Ltd. was made by the wife on similar grounds and both motions were heard by Winslow J.

The learned judge refused the application in respect of the stock in Robinson & Co. Ltd. on the ground that the articles of association of that company contain a mandatory requirement that the instrument of transfer shall be in writing in the usual common form and that as the usual common form required attestation of the signature of the transferor by a witness, the lack of attestation of the transferor's signature in the transfer form was a material defect. The learned judge took the view, in the case of the stock in Robinson & Co. Ltd., that attestation of the husband's signature by a witness was an essential matter with which there must be strict compliance.

However, the learned judge held that articles 49 and 50 of the articles of association of the company, whilst requiring an instrument of transfer to be executed by or on behalf of the transferor and transferee, contain no such mandatory requirement with regard to the form of the instrument of transfer and that these articles merely permit but do not demand the use of the usual common form.

The learned judge also held that the presumption that the husband intended to make a gift of the $5,000 stock in question to the wife by the delivery of the certificate and the signing of a share transfer in respect of that stock had not been rebutted by the husband. He took the view that the husband had clearly done all that he could possibly have done, short of actual registration, to divest himself of the ownership of the stock and to vest it in his wife.

There are two questions to be decided in this appeal. The first is whether or not article 50 of the articles of association of the company requires a member who wishes to transfer all or any of his stock or shares to use the usual or common form in use in Singapore, it being agreed that the directors have never approved any other form.

Section 65(1) of the Companies Ordinance (Cap. 174) provides as follows:—

> "65(1) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company, and shall not be of the nature of immovable property."

Article 50 of the articles of association of the company is in the following terms:—

> "50. Subject to such of the restrictions of these articles as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve."

It is settled law that a shareholder who desires to transfer his shares must conform with the provisions relating to transfer in the articles of association. If he fails to do so, the company is entitled to refuse to register the transfer, and in such a case the court will decline to interfere.

As I have stated, it is agreed that the directors have never approved any other form. With respect to the learned judge, it is in my opinion impossible in this case to read into article 50 a permissive use of any form other than the usual or common form which is in use in Singapore. The only matter which is permissive in the article is that a member is allowed to decide whether he wishes to transfer all or any of his shares or not. If he decides to transfer some or all of his shares, he is required on the true construction of that article to use either the

usual or common form or any other form which the directors may approve.

There is evidence on the record of what is the usual or common form in use in Singapore and there is also evidence that the directors have never approved any other form nor have they approved the actual transfer submitted to them in respect of the stock in question. The usual or common form in use in Singapore requires the signature of the transferor to be attested by a witness and the transfer submitted to the directors shows that the husband's signanaure was not so attested.

In the circumstances of this case the company was entitled to refuse to register the transfer. In my opinion, the learned judge erred in ordering rectification of the register on the ground that the transfer was in conformity with the essential requirements of article 50.

The second question to be decided is whether the wife had a good title to the stock in question. If at the date the transfer was presented for registration there was a complete gift of the stock by the husband to the wife, then the court on an application under section 101 of the Companies Ordinance is entitled to order that the wife's name be entered in the register of members in place of that of her husband.

The law on this point is, in my view, correctly set out in the following passage in 18 *Halsbury's* Laws 3rd edition at page 396 paragraph 755:—

"If a gift is to be valid the donor must have done everything, which, according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do."

For the purposes of this appeal, I will assume that on the evidence it has been established that the husband intended to make a gift of the stock in question at the time he delivered the certificate and the transfer form to the wife. The question is whether he has done everything he could, and which was necessary for him to have done, to divest himself of his legal and equitable interest in the stock in favour of the wife.

As the wife is claming title to the stock she must bring her case within the principle enunciated in the following passage from the judgment of Warrington L.J. in *Re Williams* [1] at page 8:—

"Claiming as she does as a volunteer and alleging that the assignor made this gift to her, she can only succeed if she can show that the assignor did everything which according to the nature of the property comprised in the assignment was necessary to be done in order to transfer the property and render the assignment binding upon him."

I have, for the reasons which I have already indicated, stated my view that the transfer form was not in conformity with article 50 in that the husband had not signed the transfer in the presence of an attesting witness. In these circumstances it is, in my opinion, impossible to say that the husband had done everything that was required to be done by him in order to transfer effectually the title in the stock from himself to the wife. It was necessary for him to sign the transfer form in the presence of a competent witness and this he had not done.

In my judgment, assuming that the husband had the intention of making a gift of the stock to the wife, there was an incomplete gift and the learned judge erred in deciding that the husband had clearly done all that he could possibly have done, short of actual registration, to divest himself of the ownership of the stock and to vest it in the wife and in ordering rectification of the register of members.

I would accordingly allow the appeal.

Wee Chong Jin C.J. and **Chua J.** concurred.

Appeal allowed.

Solicitors: *Rodyk & Davidson; A. S. K. Wee; Allen & Gledhill.*

RAMANATH & ORS. v. BAN TSAN CHUAN

[F.C. (Pike C.J. (Borneo), Gill & Chang Min Tat JJ.) September 15, 1967]

[Jesselton — Federal Court Civil Application No. X. 4 of 1967]

Practice & Procedure — Appeal — Enlargement of time for — Interlocutory order — Federal Court (Civil Appeals) (Transitional) Rules, 1963, r. 13 — Courts of Judicature Act, 1964, s. 68 — R.S.C., 1957, O. 54 r. 22A.

Practice and Procedure — Four-day rule — Intention of — Court's discretion.

In an application under rule 13 of the Federal Court (Civil Appeals) (Transitional) Rules, 1963, for enlargement of time within which to appeal against an interlocutory order made by a High Court striking out the defence in an action, the applicant must first show that the facts and circumstances of his case merit the grant by the Federal Court of special leave. If he satisfied the court on this point the court would before acceding to his application require to be satisfied that his proposed appeal against the striking out order had merits. But merely to show that such proposed appeal has merits without also showing there are special grounds for the court to exercise its discretion to grant him special leave to appeal out of time would not be enough.

The fact that counsel is not resident within the jurisdiction of the High Court is no ground by itself for extending the time for doing any particular act which the rules require should normally be done within a specified time.

The four-day rule intends that an application for further argument should be made promptly. In this case there had not been shown to exist on the facts and circumstances any reason to justify the exercise by the court of its discretion to give special leave.

FEDERAL COURT.

K. E. Hilborne (*V. Kumar* with him) for the applicants.